

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
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DEPARTMENT OF COMMERCE
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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE**

STATE OF UTAH

IN THE MATTER OF THE LICENSES OF
NICOLA IRENE RILEY, MD, TO
PRACTICE AS A PHYSICIAN /
SURGEON AND TO ADMINISTER AND
PRESCRIBE CONTROLLED
SUBSTANCES IN THE
STATE OF UTAH

AMENDED ORDER

Case No. DOPL 2013- ... 247

The Utah Division of Occupational and Professional Licensing (Division), sua sponte, hereby amends its order in the above-entitled matter dated August 23, 2013. On June 20, 2013, the Division issued to Nicola Irene Riley, M.D. (Respondent) the notice of agency action in this matter. At all relevant times, Respondent has been licensed with the Division and subject to its jurisdiction and regulation. Pursuant to Utah Administrative Code § R156-46b-202(2)(d), the matter was heard by the Utah Physicians Licensing Board (Board) in an informal proceeding.¹ Following the proceeding, the Board made its recommendation to the Director of the Division (Director), who has considered the recommendations along with the record of the proceeding. Pursuant to Utah Code § 58-1-109(5), the Director now enters a final amended order.

¹ The informal proceeding before the Board was not a hearing. Although Respondent and her counsel attended and provided information to the Board as requested, Respondent did not give sworn testimony.

BY THE DIRECTOR:

In addition to holding a Utah license, Respondent has been licensed in Maryland and Wyoming. On or about August 31, 2010, the Maryland State Board of Physicians (Maryland Board) issued an interim order suspending Respondent's license pending resolution of allegations that she engaged in unprofessional conduct while performing an abortion.

On or about March 8, 2011, Respondent entered into a non-disciplinary stipulation and order with the Division under which she agreed to be restricted from performing abortion procedures in Utah until such time as a final order were issued by the Maryland Board.

When Respondent applied for licensure in Utah, Maryland, and Wyoming, she provided similar explanations regarding her criminal history. On or about August 29, 2011, having been challenged by the Division as to the accuracy and truthfulness of her explanations, Respondent entered into a disciplinary stipulation and order. Respondent admitted that she had failed to provide accurate and correct information and acknowledged that doing so constituted unprofessional conduct. She was issued a public reprimand, required to pay a \$10,000 civil penalty, and required to provide a written essay explaining the effects of her unprofessional conduct on herself, her patients and her profession.

On or about May 6, 2013, the Maryland Board issued a final order (the Maryland order) on the allegations regarding Respondent's conduct while performing an abortion, and also addressing the issues regarding her license application disclosures. The issuance of this final order terminated the restriction Respondent agreed to in her non-disciplinary stipulation with the Division and allowed her to resume performing abortion procedures in Utah at her discretion.

The Maryland order makes the following findings of fact:

1. Respondent provided false and deceptive information when she completed her initial application for licensure in Maryland.
2. Respondent failed to ensure that the facility where she performed the abortion had an appropriate contingency plan in place to respond to medical emergencies.
3. Respondent used the back seat of a private car to transport a critically injured patient to the hospital.
4. Respondent delayed transfer of the patient for a least 90 minutes after the critical injuries were sustained.
5. Respondent had been disciplined in Utah and Wyoming for acts that would be grounds for discipline in Maryland; specifically, for making material misrepresentations in an application for licensure.

The Maryland order concludes that Respondent's actions constitute unprofessional conduct and revoked her license. Respondent has appealed the order, and the matter is currently making its way through the court system.

The Board must determine, first, whether to accept the findings of the Maryland Board. In making this determination, no consideration may be given to any evidence or statement from Respondent that the findings are incorrect. Utah Administrative Code § R156-1-102(16)(b)(vi). As to any finding that is accepted, the Board must then determine whether the finding would support a conclusion under Utah laws, rules, and standards that Respondent engaged in unprofessional conduct. Finally, if it is concluded that Respondent's conduct would be grounds

for disciplinary action in Utah, then the Board and Director must determine the appropriate sanction.

The Maryland order outlines ample support for its finding that Respondent provided false and deceptive information about her criminal history when she applied for her initial license. The Board therefore accepts this finding. Attempting to practice as a physician by any form of communication that is false, misleading, deceptive, or fraudulent constitutes unprofessional conduct under Utah Code § 58-1-501(2)(h). Therefore, Respondent's conduct in submitting to Maryland regulators a license application containing materially misleading information would be actionable had it occurred in Utah. In fact, the same conduct did occur in Utah. Where Respondent has been sanctioned for said conduct, there is little basis for taking an additional action against Respondent now. Therefore, the first and fifth findings of the Maryland Board are not considered further.

As to the second and third findings of the Maryland Board, it is well supported that Respondent used a car to transfer her patient to the hospital; therefore, the Board accepts the finding on this point. The Maryland order does not challenge Respondent's decision to transfer the patient to the hospital as being inappropriate; rather, it takes issue with the mode of transport used. The standard of care, at least according to the Maryland order, requires use of an ambulance, without regard to location or any other circumstances. In addition, under the Maryland standard of care, failure to ensure that a facility's contingency plan includes use of an ambulance constitutes unprofessional conduct. This is not the standard of care in Utah.

In Utah, a licensed physician may use his or her discretion to weigh the circumstances and determine the best way to transfer a critically injured patient. If ambulance service is readily

available, then the standard of care would in most cases require use of an ambulance. However, if a patient's condition is too critical to wait for ambulance service in a rural or remote area, then use of a private car might well be the best option. Where the Maryland order does not establish that ambulance service was readily available in the area where Respondent performed the abortion at issue, the order is insufficient to support a conclusion that Respondent's use of a private car to transport her patient would constitute unprofessional conduct in Utah.

To the extent that Respondent failed, prior to treating patients, to inquire into the abortion clinic's plan for hospital transport, the Board finds that she failed to adhere to the highest professional standards. Therefore, her conduct was unprofessional under Utah Code § 58-1-501(2)(b). In mitigation, once Respondent found herself in a position of having to provide care under a somewhat risky contingency plan, it appears that she successfully addressed the needs of her patient.

There are concerns regarding the final finding in the Maryland order; specifically, that Respondent delayed the transfer of her patient for approximately 90 minutes after the patient sustained critical injuries. However, the Board accepts the finding of the Maryland Board until such time as it may be overturned through the appellate process. Having accepted the finding, the Board concludes that causing or allowing for a 90-minute delay in transporting a critically injured patient to the hospital violates the physicians generally accepted professional standard, and therefore, unprofessional conduct under Utah Code § 58-1-501(2).

ORDER

On the basis of the foregoing analysis, the Director publicly reprimands Respondent for failing to adhere to best practices in reviewing and evaluating the contingency plan of a medical

facility prior to treating patients there and for committing unprofessional conduct in allowing or causing an unreasonable delay of 90 minutes prior to transferring a critically injured patient to the hospital. Per the Board's request, Respondent is ordered to submit an essay describing how she will modify her practice to ensure that any facility in which she practices has an appropriate contingency plan, how she will deal with emergency issues in the future, and how she will remain current on emergency protocols. Respondent shall provide her essay to the Board no later than during its October 9, 2013 meeting.

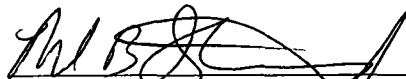
In addition, pursuant to Utah Administrative Code § R156-67-503(1)(x), Respondent is assessed a civil penalty of \$5,000 for unprofessional conduct. The civil penalty shall be stayed for a period up to three (3) years from the date of this order. If, during this three-year stay, Respondent's appeal of the Maryland order results in a finding that there was no inappropriate delay in her transport of the patient and that she adhered to all the applicable professional standards in reviewing and evaluating the contingency plan of the abortion clinic, the civil penalty shall be permanently waived, and the public reprimand shall be removed from Respondent's Utah license history. It is Respondent's responsibility to inform the Division of any such finding and to provide all relevant documentation for review.

This order hereby amends the order dated August 23, 2013 and becomes the final order.

This order shall be effective on the signature date below.

Dated this 25th day of November, 2013.

UTAH DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING



Mark B. Steinagel, Director